

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARIELA GONZALEZ,)	
)	C.A. NO.:
Plaintiff,)	
)	
v.)	
)	TRIAL BY JURY DEMANDED
E.I. DUPONT NEMOURS & COMPANY)	
)	
Defendant.)	

COMPLAINT

1. Plaintiff, Mariela Gonzales, is an adult Hispanic individual who resides at 80 Welsh Tract Road #206, Newark, DE 19713.
2. Defendant, E I. Dupont Nemours & Company is a Delaware corporation with an address of 1007 Market Street, Wilmington, DE 19898.

JURISDICTION AND VENUE

3. This is a proceeding for declaratory and injunctive relief and monetary damages to redress the deprivation of rights secured to plaintiff by 42 U.S.C. §1981, as well as a breach of a contract claim and a common law claim brought pursuant to state law.
4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(3) and 1343(4), conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights. The Court's pendent jurisdiction of claims arising under Delaware law is invoked pursuant to 28 U.S.C. 1367(a).
5. Venue lies in this Court pursuant to 28 U.S.C. §1391 because defendant is subject to personal jurisdiction in this district.

FACIS

6. On or about January 3, 2005 plaintiff, a Hispanic woman, began employment with E.I. Dupont Nemours & Company in the capacity as a Chemical Operator. Plaintiff was treated differently than other employees due to her race and gender. Plaintiff was one of a new group of 40 employees. She was one of three women in this group.
7. As an employee, Plaintiff was paid \$16.67 per hour to start, however, her salary was decreased for reasons that were never explained to her. Other employees are provided computer access so that they may receive e-mail and employee information from the company. Plaintiff could not access the time entry system to determine why there was a decrease in her pay. Requests by plaintiff to allow her access to the system went ignored by her Supervisors and Managers. Plaintiff was the only new hire who was without computer access.
8. New employees at E.I. Dupont Nemours are given five (5) pairs of pants, five (5) shirts, a coat and two (2) jumpsuits. Plaintiff was not given uniforms but was told they were on order. Plaintiff was able to obtain two (2) sets of temporary overalls given to her by a friend from another department within the company. Everyone hired at the same time as Plaintiff had their work clothes at the end of 4 months. Plaintiff never received her uniforms.
9. On or about February 28, 2005, Plaintiff received her first evaluation, a three month review, by Team Manager Clarissa Hart. That evaluation was good, but was based only on Plaintiff's time training and no operational hours.
10. Plaintiff was awarded a \$50 bonus voucher.
11. On or about April 5, 2005, Plaintiff received her second evaluation by her Team

Supervisor, Paul Kaiser. Plaintiff was given a "Needs Improvement" however, she was awarded another \$50 bonus.

12. When Plaintiff questioned her supervisor, Paul Kaiser about the rating of "Needs Improvement" she was told that it was because she was reading books on her break. Others were allowed to read newspapers on their breaks without comment from management.
13. When she spoke to Paul Kaiser regarding the books she was reading, he informed her that it was "No big deal"
14. Plaintiff asked Mr. Henry Wise, a trainer, if he noticed anything lacking in her work. He informed her no and he explained that he was not asked for his opinion regarding her evaluation.
15. Plaintiff was awarded another \$50 bonus voucher for her work performance.
16. Coworkers, who worked with her on a daily basis, constantly told her about her outstanding progress.
17. Plaintiff was given several written tests by her instructor, Jerry Murphy, and scored among the highest in her training class.
18. On or about June 9, 2005, Plaintiff was reviewed for a third time by her new Supervisor, Tony Calvirei, who rated her as "Absolutely no good."
19. Prior to this third review, Plaintiff never worked with or around Tony Calvirei. Plaintiff has no knowledge of how Mr. Calvirei was able to perform a review or what the basis of his opinion was.
20. Defendant, through Supervisor Tony Calvirei, deliberately falsified information on plaintiff's review to create a basis to terminate plaintiff. Defendant did so in a malicious

manner based on Plaintiff's gender and race.

21. As a result of her June 9, 2005 evaluation, Plaintiff redoubled her efforts to respond to the negative review and show improvement.
22. About a week before Plaintiff was terminated Tony Clavirei thanked her for going beyond the call of duty and recognized her efforts during a team meeting.
23. On or about June 28, 2005, two days prior to the end of her probationary period, without cause or reasonable justification E.I Dupont Nemours terminated Plaintiff's employment on an immediate basis. Defendant terminated Plaintiff at that time to avoid having plaintiff advance from her probationary period.

COUNT I.

RACIAL AND GENDER DISCRIMINATION UNDER 1981.

24. The averments of paragraphs 1 through 23 are incorporated by reference as if fully set forth at length.
25. Defendant's action and its treatment of plaintiff was based on racial and gender discrimination and constitute a violation of 42 U.S.C. 1981.

WHEREFORE, Plaintiff requests legal and equitable relief including:

- a) injunctive relief against further acts of discrimination and requiring Defendant to provide employment discrimination training to its employees;
- b) front pay;
- c) back pay with interest;
- d) compensatory damages for Plaintiff's humiliation, anxiety, emotional distress, costs for therapy and medication, lost wages and benefits;

- e) punitive damages;
- f) attorneys fees and costs.

COUNT II.

BREACH OF CONTRACT

Breach of Duty of Good Faith and Fair Dealing

- 26. Paragraphs 1-25 of Plaintiffs' Complaint are incorporated herein by reference as though set forth at length.
- 27. The contract of employment between Ms. Gonzalez and E. I. DuPont Nemours & Company was subject to a duty of good faith and fair dealing by both parties thereto.
- 28. Defendants specifically and repeatedly took actions in violation of public policy that were motivated by their ill will against plaintiff and were taken to deny her continual employment.
- 29. Defendant's actions, included but are not limited to,
 - falsifying information for plaintiff's employment review without justification so as to create a basis to terminate plaintiff;
- 30. These actions denied Plaintiff a permanent position with E. I. DuPont Nemours & Company, even though she was qualified for the position.
- 31. By their actions and conduct as set forth herein, the defendants breached the duty of good faith and fair dealing arising and accompanying Ms. Gonzalez's contract of employment with E. I. DuPont Nemours & Company.
- 32. As a direct and proximate result of the conduct of the defendants as outlined above, Ms. Gonzalez was damaged as set forth herein.

WHEREFORE, Plaintiff requests legal and equitable relief including:

- a) injunctive relief against further acts of discrimination and requiring Defendant to provide employment discrimination training to its employees;
- b) front pay;
- c) back pay with interest;
- d) compensatory damages for Plaintiff's humiliation, anxiety, emotional distress, costs for therapy and medication, lost wages and benefits;
- e) punitive damages;
- f) attorneys fees and costs.

NOLTE & ASSOCIATES



R. STOKES NOLTE, ESQUIRE

ID No. 2301

Nolte & Associates

1010 N. Bancroft parkway Suite 21

Wilmington, DE 19805

(302) 777-1700

Attorney for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS <u>Mariela Gonzalez</u> (b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <u>Nolte Associates, 1010 N. Bancroft Pkwy</u> <u>Suite 21 Wilmington, DE 19805</u>	DEFENDANTS <u>E I Dupont Nemours & Company</u> County of Residence of First Listed Defendant <u>New Castle</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
--	---

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF DEF <input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF <input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4										
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5										
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USC 1981</u> Brief description of cause: <u>Wrongful termination based on race gender</u>
----------------------------	---

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	--	--

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
-------------------------------------	---------------------------------	---------------------

DATE _____	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>
------------	---

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG JUDGE _____	
-----------------	--------------	--------------------	-------------	-----------------	--

FILED
U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 OCT 17 PM 4:18

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 - 643

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF _____ COPIES OF AO FORM 85.

10-17-06
(Date forms issued)

Jason Stowell
(Signature of Party or their Representative)

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action